

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

Resolution No.: L-615
February 24, 2022**RESOLUTION****RESOLUTION RESPONDING TO APPEAL OF PRA #19-664 AND
AUTHORIZING DISCLOSURE OF RECORDS OF THE CALIFORNIA
PUBLIC UTILITIES COMMISSION SAFETY AND ENFORCEMENT
DIVISION'S INVESTIGATION OF THE 2018 CAMP FIRE****SUMMARY**

Brandon Rittiman (Rittiman") submitted a records request under the California Public Record Act (CPRA) to the California Public Utilities Commission ("Commission"), PRA #19-664, seeking records of the Commission's Safety and Enforcement Division's (SED's) investigation of the 2018 Camp Fire. However, the Commission has not yet authorized disclosure of SED's Camp Fire investigation records in accordance with its standard practices under Commission Resolution L-436, which limits staff's ability to disclose investigation records without Commission authorization. In response to PRA #19-664 the Commission's Legal Division (Legal Division) informed Rittiman that, pursuant to Resolution L-436, staff could not make SED's investigation records public without the formal approval of the full Commission. Rittiman formally appealed the denial of the request. In accordance with Commission General Order (G.O.) 66-D § 6, this resolution responds to the appeal of the denial of information requested in PRA #19-664. This resolution authorizes the release of SED's investigation records from the 2018 Camp Fire with certain limitations as noted below.

BACKGROUND

On December 10, 2019 Rittiman submitted PRA #19-664 which sought:

- All records, images, and files related to CPUC data request SED-003, as referenced in footnote 78 of the SED report titled "I.19-06-015 Appendix A SED Camp Fire Investigation Report REDACTED.pdf"

In response to PRA #19-664 on June 16, 2021 the Legal Division informed Rittiman that the records requested were SED's investigation records from SED's investigation of the 2018 Camp Fire and pursuant to Resolution L-436 staff could not make SED's investigation records public without the formal approval of the full Commission.

On June 23, 2021 Rittiman appealed the Legal Division's denial of access to the records requested in PRA #19-664. As part of that appeal Rittiman challenged PG&E's confidentiality designations, as follows

Third, without a log of records and exemptions, I cannot assess whether PG&E's "confidentiality" designations would still apply to my request, given the narrowed scope mentioned above. To the extent PG&E has designated certain responsive records as "confidential," Section 583 of the Public Utilities Code authorizes the CPUC to disclose these records. Indeed, Section 583 provides that records shared with the Commission by public utilities may be disclosed to the public "on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding." Because the public interest in these investigative records outweighs any "confidentiality" concerns raised by PG&E, the public utility that started the deadliest wildfire in state history through criminally reckless behavior and multiple regulatory violations, the Commission should disclose them promptly.

In accord with the requirements of G.O. 66-D, this resolution responds to the appeal of the denial of information requested in PRA #19-664. This resolution authorizes the release of SED's investigation records from the 2018 Camp Fire with certain limitations as noted below.

KEY DATES

1. December 10, 2019: Rittiman submits PRA #19-664 to the Commission.
2. June 16, 2021: Legal Division denies the information requested in PRA #19-664.
3. June 23, 2021: Rittiman appeals denial of information sought in PRA #19-664.

DISCUSSION

The records requested by Rittiman in PRA #19-664 are "public records" as defined by the California Public Records Act ("CPRA").¹ The California Constitution, the CPRA, and discovery law favor disclosure of public records. The public has a constitutional right to access most government information.² Statutes, court rules, and other authority granting access to information must be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access.³ New statutes, court rules,

¹ Cal. Gov't. Code § 6250, *et seq.*

² Cal. Const. Article I, § 3(b)(1).

³ Cal. Const. Article I, § 3(b)(2).

or other authority that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest.⁴

The Commission has exercised its discretion under Cal. Pub. Util. Code § 583 and implemented its responsibility under Cal. Gov't. Code § 6253.4(a) by adopting guidelines for public access to Commission records. G.O. 66-D took effect on January 1, 2018. It describes the manner in which information must be submitted to the Commission in order to be treated as confidential. However, Commission Resolution L-436 describes the manner in which Commission investigation records will be made public.

Resolution L-436 limits Commission staff's ability to disclose Commission investigation records in the absence of disclosure during a proceeding or a Commission order authorizing disclosure. Resolution L-436 authorizes the disclosure of certain Commission generated investigation reports and correspondence once an investigation is closed, but limits disclosure of information provided by utilities, in the absence of Commission authorization. As a result, Commission staff denies most initial requests and subpoenas for investigation records, especially while investigations remain open.

There is no statute forbidding disclosure of the Commission's safety investigation records. Nevertheless, with certain exceptions for incident reports filed with the Commission, we generally refrain from making most accident investigation records public until Commission staff's investigation of the incident is complete. Commission staff and management must be able to engage in confidential deliberations regarding an incident investigation without concern for the litigation interests of plaintiffs, regulated entities, or other parties.

The Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.⁵ Disclosure of such records does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident or incident under investigation.⁶ Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility accidents or incidents, the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident or incident.

⁴ *Id.*

⁵ Where appropriate, the Commission has redacted portions of investigation records which contain confidential personal information, the disclosure of which would constitute an unwarranted invasion of privacy, and other exempt or privileged information.

⁶ *See, e.g.,* Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in Decision 93-05-020, (1993) 49 P.U.C. 2d 241; L-309 *Re Corona* (December 18, 2003); L-320 *Re Knutson* (August 25, 2005).

The Commission investigation of the incident is complete. Therefore, the public interest favors disclosure of the requested Commission's investigation records. We will not authorize disclosure of our entire investigation records, however. In accord with our standard practices, we will withhold records, or portions of records, that contain information subject to Commission held privileges such as our attorney-client privilege; attorney work product doctrine; official information privilege; and deliberative process privilege; as well as portions of records that contain confidential personal information, to the extent we determine that the disclosure of such information would constitute an unwarranted invasion of personal privacy,⁷ or that may be subject to other exemptions, privileges, or similar limitations on disclosure which we find applicable and necessary to assert.

In wildfire investigations such as the investigation of the Camp Fire, we may enter into nondisclosure agreements with the California Department of Forestry and Fire Protection ("CAL FIRE") and other local government entities, because such agreements permit staff to share records with these agencies, and to receive records and information from them, pursuant to Cal. Gov't. Code § 6254.5(e), without waiving rights to assert CPRA exemptions in response to CPRA requests. Information acquired in confidence by each agency, and not disclosed to the public, is also protected against disclosure in response to subpoenas and other discovery by the Cal. Evid. Code § 1040 official information privilege. We will refrain from disclosing records subject to such agreements, except to the extent disclosure may be consistent with such agreements.⁸

We now specifically address PRA 19-664 because there are certain matters unique to this request that require further explanation. These matters relate to the provisions in G.O. 66-D that limit Legal Division disclosure of records subject to confidentiality claims associated with records submitted to the Commission.

⁷ When responding to subpoenas seeking these records, we will withhold personal information subject to California Information Practices Act ("CIPA") [Cal. Civ. Code § 1798, *et seq.*] limits on disclosure, where conditions on disclosure which have not been met. Cal. Civ. Code § 1798.24(k) authorizes disclosure of personal information in response to subpoenas if the agency reasonably attempts to notify the individuals to whom the record pertains. Cal. Code Civ. Pro. §§ 1985.3 and 1985.4 require subpoenaing parties to send notices to individuals whose information is sought, in certain situations.

⁸ For example, with the consent of the party that provided information subject to such a nondisclosure agreement.

G.O. 66-D

General Order 66-D § 3.2 sets forth procedural rules for seeking confidential treatment of information submitted to the Commission outside a formal Commission proceeding,⁹ which states in part that:

An information submitter bears the burden of proving the reasons why the Commission shall withhold any information, or any portion thereof, from the public. To request confidential treatment of information submitted to the Commission, an information submitter must satisfy all of the following requirements:

- a) If confidential treatment is sought for any portion of information, the information submitter must designate each page, section, or field, or any portion thereof, as confidential. If only a certain portion of information is claimed to be confidential, then only that portion rather than the entire submission should be designated as confidential.
- b) Specify the basis for the Commission to provide confidential treatment with specific citation to an applicable provision of the CPRA. ... ¹⁰
- c) Provide a declaration in support of the legal authority cited in Section 3.2(b) of this GO signed by an officer of the information submitter or by an employee or agent designated by an officer.

....

G.O. 66-D § 5.2 provides that:

Information submitted to the Commission with no claim of confidentiality at all may be released to the public without further action by the Commission, unless the Commission withholds the information per an exemption of the CPRA. This provision applies regardless of the date the information was submitted to the Commission. Information created by the Commission may be released to the public without further action by the Commission, unless the Commission withholds the information per an exemption of the CPRA.

⁹ G.O. 66-D § 3.3 provides that § 3.2 requirements do not apply to formal proceedings of the Commission.

¹⁰ Detailed requirements for specific types of confidentiality claims are omitted from this quotation in the interest of brevity.

G.O. 66-D § 5.5 provides that if the Commission receives information submitted with a claim of confidentiality that satisfies the requirements of G.O. 66-D § 3.2, the Legal Division will determine whether the information submitter has established a lawful basis for confidentiality.¹¹ If the Legal Division determines that the information submitter has established a lawful basis for confidential treatment, it will so inform requesters seeking information subject to the confidentiality claim and not release the information.¹² Similarly, if a records requester seeks information created by the Commission, and the Legal Division finds a lawful basis to withhold the information, it will so inform requesters seeking information subject to the confidentiality claim and not release the information.¹³ In either event, the Legal Division will:

comply with the CPRA by providing the requestor with enough detail about the withheld information so that the requestor broadly understands what is being withheld and why, without disclosing confidential information. If a CPRA request is denied in whole or in part, the requestor may appeal to the Commission for reconsideration by submitting a Public Information Appeal Form within ten days of receiving notice that a CPRA request has been denied in whole or in part. The Public Information Appeal Form may state the reasons why the information should be released.¹⁴

If, however, the Legal Division does not believe a confidentiality claim submitted to the Commission has presented a lawful basis for confidential treatment, it must prepare a draft resolution addressing the confidentiality claim and obtain Commission authorization for disclosure before the information at issue may be disclosed.¹⁵

When responding to records requests, the Commission itself is responsible for making independent determinations regarding the disclosure or withholding of Commission records, and the CPRA prohibits agencies from delegating this task to others.¹⁶ Thus, the Commission cannot lawfully simply rely on submitted confidentiality claims as a basis for withholding records, or portions of records.¹⁷ Rather, the Commission must make its

¹¹ G.O. 66-D § 5.5(a).

¹² *Id.*, and G.O. 66-D § 5.5(b).

¹³ G.O. 66-D §§ 5.5(d) and 5.5(b)

¹⁴ G.O. 66-D §§ 5.5 (b) and 5.5(d).

¹⁵ G.O. 66-D § 5.5 (c).

¹⁶ Cal. Gov. Code § 6253.3: “A state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter.”

¹⁷ Confidentiality claims understandably primarily view CPRA exemptions and similar authority through the lens of the information submitter’s own interests and interpretations of the law. The Legal Division has found that the quality of confidentiality claims varies considerably, and that confidentiality claims have been known to: 1) reference numerous statutes, decisions, and other

own independent determinations and be prepared to defend those determinations in court, if challenged. Such determinations require both careful legal analysis and the thoughtful evaluation of the public interests served by disclosing or withholding Commission records, or portions of records.

The CPRA requires the Commission to disclose public records in response to public records requests unless the records are subject to one or more specific CPRA exemptions or the Commission determines that, “on the facts of the particular case, the public interest served by withholding records clearly outweighs the public interests served by disclosure.”¹⁸ The fact that a particular CPRA exemption may potentially apply to a particular record or portion of a record is not a requirement that the Commission withhold the record or portion of record on the basis of the exemption. “Unless a record is subject to a law prohibiting disclosure, CPRA exemptions are permissive, not mandatory; they allow nondisclosure but do not prohibit disclosure”; an agency may cite an exemption as a basis for withholding records, but is not compelled to do so, and agencies are free to adopt policies providing greater access to “its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.”¹⁹

authority in checklist format, without explaining in useful detail how the authority applies to the specific information for which confidential treatment is requested, and often with citation to authority not actually applicable to such information; 2) inaccurately represent the language and/or intent of cited authorities; and 3) conflate private economic interests in confidentiality with public interests, when contending that the public interests that would be served by withholding information from the public clearly outweigh the public interests that would be served by disclosure.

¹⁸ Cal. Gov. Code § 6255(a).

¹⁹ *Phase 2A Decision Adopting General Order 66-D and Administrative Processes for Submission and Release of Potentially Confidential Information*, D.17-09-023, at 11; *Modified Presiding Officer’s Decision Finding the San Francisco Municipal Transportation Agency in Contempt, in violation of Rule 1.1 of the Commission’s Rules of Practice and Procedures (“SFMTA”)* (2015) Decision (“D.”) 15-08-032, at 18: “CPRA exemptions are permissive rather than mandatory; they allow nondisclosure but do not prohibit disclosure. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 652; *Re San Diego Gas and Electric Company* (1993) D.93-05-020). [Footnote: 49 CPUC2d 241, at 242.]” *See also, Marken v. Santa Monica-Malibu Unified School District* (2102) 202 Cal.App.4th 1250, 1261-1262; *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 905; *Black Panthers v. Kehoe* (1974) 42 Cal.App.3d 645, 656; Cal. Gov’t. Code § 6253(e): “Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.”; and the penultimate sentence in Cal. Gov’t. Code § 6254: “This section does not prevent any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.” Thus, the fact that a record may fall within a CPRA exemption does not preclude its disclosure.

Certain CPRA exemptions²⁰ and Cal. Evid Code privileges²¹ expressly require a balancing of public interests for and against disclosure, and others inherently require specific substantive determinations.²² It might well be said that any agency determination to assert any CPRA exemption as a basis for withholding records involves a several part evaluation. First, one must determine whether the asserted authority for confidential treatment, in the form of a CPRA exemption, a Cal. Evid. Code privilege, statute prohibiting disclosure of certain information, or other authority clearly or potentially applies to the specific information at issue and could potentially form the basis for a Commission decision to withhold records or portions of records. Second, if the CPRA exemption and/or other authority requires a balancing of public interests for and against disclosure, or a specific substantive determination as to the impact of disclosure, a balancing of interests and/or specific substantive determination is required. Third, it is often necessary or useful to see whether the Commission has previously made a determination regarding the public status or confidential nature of the specific information subject to a confidentiality claim, since such prior action may guide a current determination.²³ However, unless the Commission definitively makes a class of records public or confidential, or issues a decision making specific records in a specific proceeding confidential, the fact that one or more decisions accord confidential status to individual records does not require the provision of confidential treatment to similar records in other situations.²⁴ Fourth, the Commission should determine whether, in the

²⁰ Cal. Gov. Code §§ 6254(a): “Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.” 6255(a): “The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

²¹ Cal. Evid. Code § 1040(b)(2) conditional official information privilege.

²² E.g., Cal. Gov. Code § 6254(c): “Personnel, medical, and similar files, the disclosure of which would result in an unwarranted invasion of personal privacy.” An agency must determine whether disclosure of personnel, medical, or similar files would in fact constitute an unwarranted invasion of personal privacy, in the specific circumstances at issue. Such determinations generally require an assessment of whether the individuals whose information is involved have an objectively reasonable expectation of privacy in the type of information at issue in the context of the particular privacy evaluation. See, e.g., *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, Commission Resolutions L-272, L-597. “Privacy concerns can and should be addressed on a case-by-case basis. (See *International Federation, supra*, 42 Cal.4th at p. 329)” *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 626.

²³ E.g., where the Commission has established a confidential/public status matrix, as in D.06-06-066 as amended by D.07-05-032, or issued a definitive determination regarding an entire class of records, or regarding specific records (G.O. 66-D § 3.4 (a)), or where, in any proceeding in which the Commission issues a decision requiring the submission of information, the Commission makes a determination of whether the information required by the decision will be treated as public or confidential (G.O. 66-D § 3.4(b)).

²⁴ G.O. 66-D § 3.4 (b): “... The determination of confidentiality in a decision governs the release of the information to the public, including in response to a CPRA request. Any determination to

final analysis, it believes its interests, and the public's interests, would be better records, or by the Commission's refraining from asserting the exemption or other served by the Commission's assertion of the potentially applicable CPRA exemption or other basis for withholding authority.

Judicial decisions regarding the CPRA frequently note that one of the fundamental reasons for the CPRA, and for the provisions in the California Constitution similarly requiring that most government records be open to the public,²⁵ is that people are entitled to access most governmental records concerning the conduct of the people's business to assure them that the government and its officials are not corrupt, spending money wastefully, or otherwise acting against the genuine interests of the public, and that the government is carrying out its regulatory and other obligations appropriately and fairly.²⁶ To the extent the public is interested in evaluating the actions of a regulatory agency, the actions the agency takes with regard to those it regulates is a key element of such evaluations. Such evaluations of necessity require that regulatory agency records and information obtained from regulated entities be broadly accessible to the public so the public can understand how the agency implements its regulatory responsibilities, e.g., how it implements constitutional and statutory obligations, whether it treats similarly situated entities similarly and without favoritism, whether its activities might be considered too soft-hearted or too heavy handed, and so on.

CPRA cases often find that the greater the light particular information may shed on the actions of an agency, the greater the public interest in disclosure.²⁷ There are, however,

treat certain information as confidential is limited to the particular information required to be submitted in that decision and does not constitute a decision of more general applicability made pursuant to Section 3.4(a)."

²⁵ Cal. Gov. Code § 6250: "...access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Cal. Const. Art. 1, § 3(b)(1): "The people have the right to information concerning the conduct of the people's business, and, therefore, ... the writings of public officials and agencies shall be open to public scrutiny."

²⁶ See, e.g.: *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at 614: "Openness in government is essential to the functioning of a democracy. 'Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.'" (*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th h319, 328-329.) See also, *City of Los Angeles v. Metropolitan Water District of Southern California* (2019) 42 Cal.App.5th 290, 306: "4. The Ability of the Public to Monitor the Expenditure of Hundreds of Millions of Dollars in Public Funds Is a Significant Public Benefit."

²⁷ E.g., *County of Santa Clara v. Superior Court* (2009): "'If the records sought pertain to the conduct of the people's business, there is a public interest in disclosure. The *weight* of that interest is proportionate to the gravity of the government tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate.'" (*Connell v Superior Court*

situations in which specific information in an agency's records may be of great interest to a particular requester, but in which the disclosure of the information would shed no great or important light on the agency's actions and implementation of its regulatory activities.²⁸

PRA #19-664

PRA 19-664 requested:

All records, images, and files related to CPUC data request SED-003, as referenced in footnote 78 of the SED report titled "I.19-06-015 Appendix A SED Camp Fire Investigation Report REDACTED.pdf"

The documents requested are PG&E narrative responses and documents produced to SED as part of SED's investigation of the 2018 Camp Fire: specifically, various documents PG&E submitted to SED in response to Data Request SED-003.

Our further review of the requested records, made during our review of Rittiman's appeal of Legal Division's initial denial of access to the requested records, reveals that PG&E did not submit a confidentiality claim consistent with the requirements of G.O. 66-D when providing records in response to Data Request SED-003. Thus, pursuant to G.O.66-D § 5.2, such records could be disclosed with no further Commission action.²⁹

We note, however, that a few responsive records include telephone numbers of PG&E customers, or of private individuals not associated with a utility, utility contractor, or governmental entity, who submitted fire information to the utility. We believe that the public disclosure of these particular telephone numbers would add little to the public's understanding of the actions of PG&E and the Commission regarding the Camp Fire, and that disclosure of these customer telephone numbers and similar personal telephone

[(1997) 56 Cal.App.4th 601], *supra*, 56 Cal.App.4th at p. 616) 'The existence and weight of this public interest are conclusions derived from the nature of the information.' (*Ibid.*) As this court put it, the issue is "whether disclosure would contribute significantly to public understanding of governmental activities.' (*City of San Jose v. Superior Court*, [(1999) 74 Cal.App.4th 1008], *supra*, 74 Cal.App.4th at p. 1018)"

²⁸ In other words, CPRA exemptions, Evidence Code privileges, and other authority that may limit public access to information must be read narrowly, since they interfere with the public's right to government information, whereas statutes and other authority requiring or permitting broader disclosure must be read widely, since they support the public's constitutional and statutory right to most government information. Cal. Const., Art. 1, § 3(b); see, e.g., *City of San Jose v. Superior Court*, *supra*, 2 Cal.5th at 617.

²⁹ General Order 66-D § 5.2: "Information submitted to the Commission with no claim of confidentiality at all may be released to the public without further action by the Commission, unless the Commission withholds the information per an exemption of the CPRA. ..."

numbers in response to records requests would constitute an unwarranted invasion of personal privacy. Such information is exempt from mandatory disclosure in response to records requests pursuant to Cal. Gov. Code § 6254(c), which exempts: “Personnel, medical, and similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.”

Nonetheless, we will exercise our own independent judgment regarding the disclosure of our records in response to records requests, and withhold the telephone numbers of utility customers, and of individuals who reported trouble to PG&E, to the extent such information is included within the records responsive to the records requests PRA #19-664. In our view, the disclosure of such information to the public would constitute an unwarranted invasion of personal privacy. Cal. Gov. Code § 6254(c) exempts from mandatory disclosure in response to records requests: “Personnel, medical, and similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” We believe the disclosure of such phone numbers would shed little or no light on the Commission’s conduct of the people’s business and its investigation of the Camp Fire.³⁰

Since Public Records Act exemptions have no effect on discovery,³¹ and since it is

³⁰ We have a different opinion regarding the identities and work contact information of utility employees and contractors contained within records of Commission safety investigations and audits. See, e.g., Resolutions L-597 (2019) *Re Disclosure of Records of Investigations of Southern California Fires*, L-436 (2013) *Re Disclosure of Safety Records*; L-386 (2009) *Re Disclosure of Records of Investigation of the Derailment of San Francisco Municipal Transit Agency Cable Car*; D.15-08-032, *supra*.. We do not believe such individual have an objectively reasonable expectation of privacy in their identities and work contact information or that the disclosure of such information would constitute an unwarranted invasion of personal privacy justifying our assertion of the Cal. Gov. Code § 6254(c) exemption in such contexts. *Hill v. NCAA*, *supra*, provides a useful discussion of the contextual nature of privacy interests. Most records requests and subpoenas seeking Commission safety investigation records come from individuals or companies with a direct interest in the investigation because they or their loved ones were injured or killed in an incident, they represent such individuals, they represent insurance companies subject to potential claims, they represent companies that may make claims or initiate litigation associated with an incident or may have claims or litigation filed against them, or they come from governmental entities that may have regulatory or law enforcement responsibilities concerning an incident. Withholding utility employee or utility contractor names and contact information in such circumstances could greatly reduce the usefulness of Commission investigation records in assisting with the resolution of claims or litigation related to an incident, and we find that the public interest strongly favors the disclosure, rather than the withholding of, such information in most situations. Speculative assertions in confidentiality claims associated with safety investigation records that disclosure would have adverse consequences for the employees are not persuasive, and we are aware of no situations in which our prior disclosures in response to records requests or subpoenas have resulted in physical harm to such employees.

³¹ Gov. Code § 6260: “The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the

foreseeable that the Commission might receive subpoenas seeking similar records, we note that the Cal. Evid. Code § 1040 official information privilege provides a lawful basis for the Commission to refrain from disclosing certain information acquired in confidence by the Commission where disclosure is prohibited by federal or state law, or where there is a need for confidentiality that outweighs the necessity for disclosure in the interests of justice. The conditional official information privilege in Cal. Evid. Code § 1040 (b)(2) which requires a careful balancing of the public interests served by disclosing or withholding information can, where appropriate, justify withholding records in response to subpoenas (and in response to CPRA requests, since it can support assertion of the Cal. Gov. Code § 6254(k) exemption.)³² We find that in the particular circumstances at issue here, there is a necessity for maintaining the confidentiality of the telephone numbers of PG&E customers, and members of the public who reported Camp Fire related information to PG&E, that outweighs the necessity for disclosure of such information in the interests of justice, and assert our Cal. Evid. Code § 1040(b)(2) official information exemption as an additional basis for withholding the telephone numbers identified above. Such information is exempt from disclosure in response to records requests, pursuant to Cal. Gov. Code § 6254(k), which exempts: “Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privileges.”

Conclusion

In this case, SED’s investigation of the Camp Fire is closed, thus the public interest in nondisclosure is not supported by PG&E’s request for confidential treatment. Conversely, the public interest in disclosure is supported by the public’s right to know what occurred in the 2018 Camp Fire. Upon balancing these factors, we find the public’s interests will be better served by disclosing, rather than withholding, the documents PG&E marked confidential when it submitted them to the SED in its investigation of the 2018 Camp Fire, with certain limitations as discussed above.

The Commission will delay disclosure of any documents identified by PG&E as confidential for 30 days from the effective date of this Resolution to allow PG&E to apply for rehearing of this Resolution if it chooses to do so. Documents not identified as confidential by PG&E will be released immediately upon the Resolution’s effective date.

COMMENTS ON DRAFT RESOLUTION

In accordance with Cal. Pub. Util. Code § 311(g), the Draft Resolution was mailed to the parties on January 21, 2022. Comments were filed on _____.

_____ laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.”

³² D.20-08-031, pp. 13-14.

FINDINGS OF FACT

1. On December 10, 2019 Rittiman submitted PRA #19-664, which requested SED's investigation records for SED's investigation of the 2018 Camp Fire.
2. In response to PRA #19-664 on June 16, 2021 Commission staff denied access to SED's investigation records for SED's investigation of the 2018 Camp Fire in the absence of a Commission order authorizing disclosure.
3. On June 23, 2021 Rittiman appealed of the denial of information requested in PRA #19-664.
4. The Commission's investigation of the 2018 Camp Fire is complete. Therefore, the public interest favors disclosure of the requested Commission's investigation records, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, any information which is subject to the Commission's lawyer-client or other Commission-held privilege.

CONCLUSIONS OF LAW

1. The documents requested in PRA #19-664 are public records as defined by Cal. Gov't. Code § 6250, et seq.
2. The California Constitution favors disclosure of governmental records by, among other things, stating that the people have the right of access to information concerning the conduct of the peoples' business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. Furthermore, the California Constitution also requires that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly; and that any new statutes, court rules, or other authority limiting disclosure be supported by findings determining the interest served by keeping information from the public and the need to protect that interest. Cal. Const. Article I, §§ 3(b)(1) and (2).
3. The CPRA favors disclosure of records.
4. Justification for withholding a public record in response to a CPRA request must be based on specific exemptions in the CPRA or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Cal. Gov't. Code § 6255.
5. Cal. Gov't Code § 6254(c) exempts from mandatory disclosure personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy.
6. Cal. Gov't Code § 6254(k) exempts from disclosure records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

7. The Commission has exercised its discretion under Cal. Pub. Util. Code § 583 to limit Commission staff disclosure of investigation records in the absence of formal action by the Commission, in Resolution L-436.
8. Cal. Pub. Util. Code § 583 does not limit the Commission's ability to order disclosure of records.
9. Cal. Pub. Util. Code § 315 prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property."

ORDER

1. The request for disclosure of SED's investigation records for the 2018 Camp Fire is granted, with the exception of any personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, or any information which is subject to the Commission's attorney-client or other Commission-held privilege or similar lawful limitation on disclosure asserted by the Commission.
2. Documents not identified as confidential by PG&E will be disclosed as of the effective date of this order. Documents, or portions of documents, identified as confidential by PG&E will be held for 30 days from the effective date of this order and disclosed at that time unless a rehearing application addressing these confidentiality claims is filed within this 30-day period.
3. The effective date of this order is today.

I certify that the foregoing Resolution was adopted by the California Public Utilities Commission at its regular meeting of February 24, 2022, and the following Commissioners approved favorably thereon:

Rachel Peterson,
Executive Director